

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
v.) DEFENDANT JUAN CONCE'S
) OBJECTIONS TO PRESENTENCE
JUAN CONCE a/k/a "King Santos",) REPORT
Defendant)
)

Now comes the Defendant, Juan Conce, in the above-captioned proceeding, and responds to the Presentence Report as follows:

¶25. The Defendant was never a leader of the Latin Kings. In fact, he has not been active in the Latin Kings for the past four years. He has never trafficked in heroin, marijuana, or guns.

¶55. The Defendant's position is that in light of *Blakely v. Washington*, 2004 WL 1402697 (U.S. June 24, 2004), he cannot be sentenced based on any enhancements found by the court as he had a right to have a jury determine the factual basis for the enhancements beyond a reasonable doubt. The guideline for the minimum amount of crack cocaine is 12, and with 3 points for acceptance of responsibility, the total offense level is 9 with a guideline range of 21 to 27 months as the criminal history category is VI.

The Defendant cannot be sentenced as a career criminal since the logic of *Blakely* requires that the predicate prior offenses be determined by a jury beyond a reasonable doubt. The United States Supreme Court case of *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), which upheld an exception for prior convictions from the *Apprendi* rule, *see Apprendi v. New Jersey*, 530 U.S. 466 (2000), is questionable law in light of *Blakely*. Justice Thomas was the swing vote for the majority in *Almendarez-Torres*, but in *Blakely*, he is in the majority. Thus, if

Almendarez-Torres were reviewed today, it would more than likely be overturned based on the logic of *Blakely*.

¶103. Ms. Fernandez has in fact moved to Miramar, Florida, and is working as a loan processor there.

Respectfully submitted,
The Defendant Juan Conce,
By his attorney,

//S//Stephen Hrones
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CERTIFICATE OF SERVICE

I, Stephen Hrones, hereby certify that on this 2nd day of September, 2004, I served a true and correct copy of the foregoing DEFENDANT JUAN CONCE'S OBJECTIONS TO PRESENTECE REPORT, where unable to do so electronically, by U.S. First-Class Mail, postage prepaid, as follows: John A Wortmann, Jr., AUSA, United States Attys Offc, Moakley United States Cths, 9thFL, 1 Courthouse Way, Boston, MA 02110; Susan M Walls, US Probation Officer, United States Probation Offc, Moakley United States Cths, 1stFL, Boston, MA 02110.

//S//Stephen Hrones
Stephen Hrones